The Indiana Energy Association's Comments Regarding IURC's Strawman Draft General Administrative Order on Improving Procedural Efficiencies

The Indiana Energy Association ("IEA")[1] appreciates the opportunity to review and comment on the strawman draft General Administrative Order released on November 10, 2020 (the "Draft GAO"). While we address each part of the Draft GAO in the italic and redline comments below, the following summarizes our overarching thoughts.

As noted in prior comments submitted by certain of the IEA's members,[2] the IEA is supportive of several proposals in the Draft GAO and remains supportive of the Commission's goal of improving the efficiency of docketed proceedings. We remain concerned, however, that the Draft GAO could have unintended consequences that are counterproductive to the Commission's goal. Parts II – V of the Draft GAO are directed at two stages of docketed proceedings: (1) the preparation of cases to be filed with the Commission; and (2) the post-hearing stage of cases (proposed orders and post-hearing settlement agreements). There are also efficiencies that could be realized by addressing the conduct of cases between the filing and evidentiary hearing. For example, this initiative could be used to improve the efficiency of the discovery process in rate cases and other complex proceedings. We encourage the Commission to consider including in the Draft GAO procedures that would establish a more structured approach to discovery that would include discovery deadlines, such as no discovery within two weeks of an evidentiary hearing or establishing timelines for seeking motions to compel. Another opportunity for efficiencies is procedures that would facilitate the orderly conduct of an evidentiary hearing, such as guidelines for scheduling of witnesses and fair allocation of hearing room time.

In addition to the burden of proof and due process concerns previously raised, we also are concerned the Draft GAO's emphasis on petitioners providing more information with their case-in-chief filings will introduce extraneous issues into cases, as opposed to simplifying cases by narrowing the issues. This is especially true with respect to the draft GAO's guideline and recommendation that petitioners provide "additional information . . . in their case-in-chief, including responses to expected questions. . . ." (emphasis added). A petitioner should not be put in a position to fear that its decision not to include with its case-in-chief information that is not required to meet a *prima facie* burden will be perceived as a failure to follow the Draft GAO's guideline and prejudice the petitioner's ability to obtain the relief it requests.

In addition to addressing the comments to specific provisions in the Draft GAO set forth below, the IEA respectfully requests the Commission consider a more balanced approach that will address all stages of docketed proceedings and encourage all parties to act in a manner, especially with respect to discovery practices, that will result in improved efficiencies.

Please note below that the Commission's proposals are in bold, and the IEA comments are in *italics* followed by suggested redline revisions. Proposals which the IEA has not commented on are those to which we have no comments**.**

[1] The IEA is comprised of 14 investor-owned gas and electric utilities and a gas utility operating as a public charitable trust. The following IEA members participated in these comments: Duke Energy Indiana, LLC, Indiana Gas Company, Inc., Indiana Michigan Power Company, Indianapolis Power & Light Company, Northern Indiana Public Service Company LLC, Southern Indiana Gas & Electric Co., and Citizens Gas.

[2] *See* October 9, 2020, letter from Kay Pashos to Beth Heline.

The IEA also recommends that the Commission give parties sufficient lead time to adapt their practices and schedules to meet any new requirements – at least six (6) months lead time is recommended.

I. The following guidelines apply to all docketed proceedings of the Indiana Utility Regulatory Commission ("Commission" or "IURC"):

A. All hearings, pre-hearing conferences, technical conferences, and attorney conferences, except for public field hearings, may be conducted electronically:

1) if no party objects; and/or

2) at the discretion of, and determination by, the Presiding Officers, on a case-by-case basis.

II. The following guidelines and recommendations apply to all Commission docketed proceedings, except for small utility rate case proceedings under Indiana Code § 8-1-2-61.5:

A. The petitioner must submit written testimony in support of the request(s) made in its petition.

We continue to believe that in in the interest of administrative efficiency, there should be limited exceptions to the testimony requirement for those types of cases where the Commission has historically not required testimony or has otherwise indicated prospectively that testimony is not required. An example of those types of cases includes electric service territory modification cases. Another example of those types of cases is those involving certain rate adjustment mechanisms. See, Cause No. 44053 (approving a Settlement Agreement for an environmental compliance plan recovery mechanism, which provided that the petition filed by the petitioner would constitute its case-in-chief). In light of the foregoing, we recommend that the above provision be modified as follows:

> **II. The following guidelines and recommendations apply to all Commission docketed proceedings, except for small utility rate case proceedings under Indiana Code § 8-1-2-61.5, mutual change of service area boundaries under Indiana Code § 8-1-2.3-6(a)(2), and proceedings for the purposes of confidentiality determinations only, such as IRP confidentiality proceedings:**
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> **A. Unless otherwise directed by statute or the Commission, the petitioner must submit written testimony in support of the request(s) made in its petition.**

B. An index of issues shall be included by any party that has at least four witnesses providing testimony and at least two of those witnesses are providing testimony on

the same issue(s). The example of the Indiana Michigan Power Company rate case (IURC Cause No. 45235) is recommended.

C. Any workpapers submitted by any party shall be submitted as Excel spreadsheets with formulas intact and with explicit references to workpapers or linkages to all source or precursor spreadsheets.

We have concerns about this provision as not all workpapers are Excel spreadsheets or have the ability to be converted into an Excel spreadsheet. An example of such a workpaper would be an article cited by a witness, which would be submitted in a portable document file ("pdf") format. Also, the requirement to provide linkages to source or precursor spreadsheets may not be necessary in all cases, as such precursor spreadsheets may not be relevant to the issues in the docket. Accordingly, we recommend the above provision be modified as follows:

> **~~Any w~~W~~W~~orkpapers prepared in their native format as an Excel spreadsheet ~~submitted by any party~~ shall be submitted as Excel spreadsheets with formulas intact and with explicit references to workpapers if applicable, or with linkages to relevant ~~all~~ source or precursor spreadsheets.**

D. Petitioners are encouraged to provide additional information for background and education in their case-in-chief, including responses to expected questions, to the extent practicable and permissible and, if applicable, without unilaterally disclosing confidential settlement negotiations.

We continue to have concerns about this provision's impact on case-in-chief testimony. This provision remains problematic because it encourages parties to include material in their cases-in-chief that is not legally required and is also potentially irrelevant. This could lead to more witnesses in cases, lengthier testimony, more discovery, and more rebuttal testimony. As a result, cases could become more complex as opposed to more efficient. We understand that some background information may be helpful in understanding key issues in cases. However, if parties are going to be encouraged to provide additional information, it should be done in a way that expressly indicates that such a recommendation is not intended to shift a party's burden of proof or expand the scope of a party's case-in-chief. Also, we believe the term "settlement negotiations" as used in this provision may be too narrow as there are times when parties may be discussing settlement more generally without necessarily engaging in settlement negotiations. In light of the foregoing, we suggest the above provision be modified as follows:

> **Petitioners are encouraged to provide additional information for background and education in their case-in-chief, ~~including responses to expected questions~~ to the extent practicable and permissible and, if applicable, without unilaterally disclosing confidential settlement discussions or adding new**

requirements that would change established statutory or case law regarding a petitioner's burden of proof.

E. Proposed orders shall:

1) Provide facts used to support the findings and cite those facts, providing the exhibit name/designation and page number;

2) Limit the recitation of facts to those that are the substantive evidence upon which the findings that support the ultimate conclusion(s) are based;

3) Not contain any new evidence or new factual arguments (i.e., not submitted or made during the evidentiary hearing); and

We have concerns about this provision as the phrase "new factual arguments" is vague and has the potential of precluding parties from drafting orders that contain material that is entirely appropriate. For example, if new facts are elicited during the evidentiary hearing, the place for parties to make new arguments based upon those new facts would be in the proposed order. Therefore, this provision could result in proposed orders that are more limited and less complete. Accordingly, we propose that the above provision be modified as follows:

Not contain any new factual evidence ~~or new factual arguments~~ (i.e., not submitted or ~~made~~ elicited during the evidentiary hearing); and

4) Not include settlement agreements entered into after the record is closed.

F. Parties entering into settlement agreements after the record is closed must request that the record be reopened so that the parties may provide testimony in support of their settlement agreement.

III. The following guidelines and recommendations apply to all Commission docketed proceedings that include a request for cost recovery, except for small utility rate case proceedings under Ind. Code 8-1-2-61.5:

A. A petitioner's case-in-chief shall contain the information needed to support its request(s) and include, either in its petition or in an accompanying summary document, an estimated dollar amount for which cost recovery is being requested and an estimate of the percentage increase in rates resulting from the requested cost recovery.

IV. The following guidelines and recommendations apply to all rate cases submitted to the Commission, except for small utility rate case proceedings under Ind. Code 8-1-2-61.5:

A. At a minimum, in addition to the Balance Sheet and Income Statement, the testimony and workpapers shall present the following specific schedules: Sch. 1 Revenue Requirements, Sch. 4. Net Operating Income, and the Gross Revenue Conversion Factor in the general presentation of municipal and investor-owned utility strawman schedules, which are posted on the Commission's website. Specifically, Sch. 4 *Pro Forma* statement should be detailed by each revenue and expense category. Every adjustment to revenues and expenses should at a minimum include the historic test year or base year, the adjustments, and pro-forma amounts, as well as reference(s) to where more detail of the calculation may be found.

We continue to have concerns that the recommended use of consistent accounting schedules inadvertently addresses contested issues, such as original cost versus fair value rate bases, and does not address the exceptions to the schedules that are necessary due to the differences amongst utilities in terms of ownership and type of service provided. Further, the above language with respect to Sch. 4 seems to be specific to a historic test year and does not seem to contemplate other types of test years. To address these overall concerns, we continue to recommend that Commission staff hold a discussion with the utilities' technical rate experts before requirements are finalized. In addition, we have a couple of minor suggested edits, as shown below.

a. At a minimum, in addition to the Balance Sheet and Income Statement, the testimony and workpapers shall present the following specific schedules: Sch. 1 Revenue Requirements, Sch. 4. Net Operating Income, and the Gross Revenue Conversion Factor in the general presentation of municipal and investor-owned utility strawman schedules for content and interrelationship purposes, which are posted on the Commission's website at the following location [ADD]. Specifically, Sch. 4 *Pro Forma* statement should be detailed by each revenue and expense category. Every adjustment to revenues and expenses should at a minimum include the historic test year or base year, the adjustments, and pro-forma amounts, as well as reference(s) to where more detail of the calculation may be found.

V. Pilot programs should:
- **A. Provide necessary information;**
- **B. Describe the use of objective criteria for evaluation of the success or usefulness of the program;**
- **C. Allow for reasonable flexibility; and**
- **D. Include testimony regarding why the program benefits all of the utility's customers, not just the participants (i.e., why it is in the public interest of all of the utility's customers).**

We have concerns about this provision as it incorrectly assumes that for a pilot program to be in the public interest it must benefit "all of the utility's customers." There are pilot programs that advance broader policy objectives that, while in the public interest, may not necessarily benefit each and every one of a utility's customers. Some of those programs along with their underlying policies have been expressly recognized by the legislature and/or the Commission itself. For example, under Ind. Code § 8-1-2-46(c), a customer assistance program that protects the affordability of utility services by providing financial relief through rates and charges to residential customers who qualify for income related assistance is expressly considered not discriminatory. Another example of a pilot program that may achieve larger societal benefits and has been supported by the Commission, is those involving distributed energy. Under those programs, individual customers are incentivized to take measures, such as the installation of solar panels, that result in them taking less generation from their utility provider. While more reliance on renewable energy may be in the overall public interest, it may not benefit all of a utility's customers due to decreased revenues that will be available to recover a utility's fixed costs. In light of the foregoing, we recommend that this provision be modified as follows:

D. Include testimony regarding why the program ~~benefits all of the utility's customers, not just the participants (i.e., why it~~ is in the public interest ~~of all of the utility's customers)~~.

VI. Any additional items for this GAO

Discovery: The Commission should require that the parties to a proceeding work together on a plan for scheduling and completing discovery. The proposed terms should be submitted to the presiding officers so that it may be considered at the time the procedural schedule is established. In the absence of an agreement, the parties may individually submit their proposed discovery terms or otherwise have their issues addressed as directed by the presiding officers.

As a general rule, discovery should be commenced early in the proceeding. The terms for the conduct of discovery should also include a date by which discovery will be completed (a discovery cut-off date). Among other things, parties should communicate regarding the efficient sequencing of discovery; alternatives or modifications to discovery otherwise permitted that would permit discovery to be completed in a more efficient manner; and means by which discovery may be completed within time periods agreed to by the parties or set by the presiding officers. The discovery process should conclude at least three business days prior to the commencement of the evidentiary hearing. Discovery should be served no later than 4:00 p.m. Mondays through Thursday and no later than noon on Friday or a day immediately preceding a State holiday unless otherwise agreed to by the parties or directed by the presiding officer. Discovery received after these deadlines will be deemed received the next business day. Parties should be encouraged when practicable to discuss discovery expectations and /or limitations to the number and scope of data requests.

Hearing Time: Unless otherwise directed by the presiding officers, all parties should work together to prepare and submit via email to the presiding administrative law judge a schedule for the presentation of all witnesses who will be cross-examined during the hearing. The presiding administrative law judge will determine the deadline for this submission, which generally should not be less than three business days before an evidentiary hearing scheduled for more than one day. The submission should also include a list of witnesses the parties do not plan to cross-examine so that the Commission may determine whether said witnesses may be excused from attending the hearing. The schedule should provide for the fair allocation of hearing room time to all parties, including the petitioner. Unless otherwise approved by the presiding officers, the schedule should adhere to the previously reserved number of hearing days. The schedule may be revised by agreement of the parties or as directed by the presiding officers. Should the parties not be able to reach agreement on such hearing logistics, the matter may be presented to the presiding officers at an attorneys conference or as directed by the presiding officers.